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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED**JUN 28 2007**

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
BELLEMONT WATER COMPANY, INC. FOR AN
EMERGENCY RATE INCREASE.

DOCKET NO. W-02526A-07-0170

DECISION NO. **69673****OPINION AND ORDER**

DATE OF HEARING:

May 23, 2007

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Mr. Bradley Ness, President, on behalf of Bellemont
Water Company, Inc.; andMs. Kenya Collins, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation.**BY THE COMMISSION:**

On March 22, 2007, Bellemont Water Company, Inc. ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application requesting an emergency rate increase in the form of a \$27.21 increase for its base gallonage charge from \$2.79 per 1,000 gallons to \$30.00 per 1,000 gallons of water until the Company is able to make needed repairs and drills a deep well. As amended on April 11, 2007, the proposed increase equates to approximately a 975 percent increase in Applicant's base gallonage charge. The Company indicated that, due to a lack of water production from its two wells, water is being hauled to supplement the Company's water production shortfall.

On April 17, 2007, the Commission, by Procedural Order, scheduled a hearing on the above-captioned matter to determine if an emergency existed that would require the relief requested by Applicant. The Commission's Procedural Order also required Applicant to provide notice to each customer by mailing and posting a copy of the notice in a public place so that the Company's

1 customers were aware of the proceeding.

2 On May 4, 2007, the Company filed certification that it had provided public notice of the
3 application and hearing as ordered by the Commission.

4 On May 23, 2007, a full public hearing was commenced before a duly authorized
5 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant appeared
6 through its president and the Commission's Utilities Division ("Staff") appeared with counsel. No
7 customers of the Company appeared to make public comment concerning the requested increase.
8 After a full public hearing, the matter was taken under advisement pending submission of a
9 recommended Opinion and Order to the Commission.

10 * * * * *

11 Having considered the entire record herein and being fully advised in the premises, the
12 Commission finds, concludes, and orders that:

13 **FINDINGS OF FACT**

14 1. Pursuant to authority granted by the Commission in Decision No. 58079 (November
15 12, 1992), Applicant is an Arizona corporation engaged in the business of providing water service to
16 seven metered commercial customers in an area ten miles west of Flagstaff, Coconino County,
17 Arizona. The Company also has a number of standpipe customers from the surrounding area.

18 2. On March 22, 2007, the Company filed with the Commission an application as amended
19 on April 11, 2007, requesting an emergency rate increase in the form of a \$27.21 increase for its base
20 gallonage charge from \$2.79 per 1,000 gallons to \$30.00 per 1,000 gallons of water until the
21 Company is able to make needed repairs and drills a deep well. The Company indicated that, due to a
22 lack of water production from its two wells, approximately 60,000 gallons of water per month is
23 being hauled to supplement the Company's water production shortfall.

24 3. The proposed increase equates to approximately a 975 percent increase in Applicant's
25 base gallonage charge.

26 4. Pursuant to the Commission's Procedural Order, notice of the Company's application and
27 hearing thereon was provided to its customers. The Commission did not receive any protests from
28 Applicant's customers and no customers appeared at the hearing to oppose the Company's

1 emergency rate request.

2 5. At present, Applicant is operating with rates which were approved by the Commission
3 in Decision No. 65853 (May 1, 2003).

4 6. Mr. Bradley Ness, Applicant's president, testified that he and his daughter-in-law and
5 son became the owners of the Company in 2006, after buying the Company's stock from its former
6 owners, the McClains. Mr. Ness' son Elliot is the Company's treasurer and his wife Klaudia is the
7 Company's secretary.

8 7. Mr. Ness testified that he has been subsidizing Applicant's operations when revenues
9 are inadequate to pay its operating expenses and to cover the costs of hauling water at \$25.00 per
10 1,000 gallons. The company purchases the water from the City of Flagstaff or a neighboring water
11 company. His son, Elliot, owns a truck which is used for hauling up to 4,000 gallons of water per
12 load.

13 8. Of the Company's seven metered customers, which are all commercial customers, one
14 is a paper company (SCA) with a four inch meter and one other customer (Schuff Steel) has a two
15 inch meter. The five remaining customers have three-quarter inch meters.

16 9. Although the Company has five wells, only two of them produce minimal amounts of
17 water (approximately six gallons per minute) when operational and the water that is produced is
18 pumped into the Company's 100,000 gallon storage tank and distributed to its metered customers.
19 These wells are both less than 200 feet deep. The Company's three other wells, two of them recently
20 drilled, are inoperative, "capped" and produce no water.

21 10. Mr. Ness estimated that the Company is experiencing a short fall in production of
22 approximately 60,000 gallons of water per month which it offsets by hauling water.

23 11. Mr. Ness testified that during an eight hour period his son is able to haul seven to eight
24 loads of water in his truck to the Company's storage tank.

25 12. According to Mr. Ness, the Company has approximately 200 standpipe customers and
26 would like to keep them as customers since their business constitutes approximately 75 percent of
27 Applicant's revenues. The Company hopes to be able to supply these customers on weekends if
28 water is available because only the largest metered customer uses water seven days a week. The

1 other six customers are closed on the weekend.

2 13. However, under the terms of Applicant's Curtailment Tariff, the Company is in a
3 Stage Four Curtailment and under the terms of the Curtailment Tariff is prohibited from providing
4 water to standpipe customers. Staff opposes providing water to standpipe customers even on
5 weekends only until the Company's water shortage problem is resolved or reduced to a lower stage of
6 its Curtailment Tariff.

7 14. Further complicating the problem is the fact that the Company is located within a new
8 fire district that requires all commercial enterprises to meet or exceed a flow rate of 1,000 gallons per
9 minute for a duration of two hours or 120,000 gallons of water for fire protection.

10 15. Mr. Ness testified that the Company is exploring a solution for its water shortage
11 problem and knows that drilling a deep well will be expensive. He has spoken with representatives
12 of his two largest customers, SCA and Schuff Steel, as possibly being willing to finance a portion of
13 this venture.

14 16. Mr. Ness has also been informed by Staff of the low interest loans available through
15 the Water Infrastructure Authority ("WIFA") to small water companies.

16 17. Based on the record, while the Company has no compliance issues with the
17 Commission, according to the Staff Report, the Company has major deficiencies in monitoring and
18 reporting with the Arizona Department of Environmental Quality ("ADEQ").

19 18. However, Ms. Ness testified that the Company is in close contact with ADEQ and is
20 taking steps to correct the monitoring and reporting problems, but the Company will need time to
21 regain compliance with ADEQ.

22 19. The Company's accountant testified that the Company is current on recent property
23 taxes, but the Company is involved with Coconino County on recomputing taxes from 2002 and 2003
24 due to an assessment error under the Company's former ownership.

25 20. While testifying, Mr. Ness related that development is progressing in the area with the
26 possibility of new industrial and commercial customers and possibly tribal development also. For
27 these reasons, the Company is pursuing its plan to secure financing for the drilling of a deep well to
28 secure a reliable water source.

21. On the positive side, the Company's water is below the new maximum arsenic level of 10 parts per billion, and does not require treatment.

22. Upon the filing of the Company's application, Staff performed a thorough review of the relief requested by the Company.

23. Staff is recommending approval of the Company's application because, after its review of the Company's finances and an inspection of the Company's utility plant, Staff believes Applicant's current situation meets the requirements of Attorney General Opinion No. 71-17¹.

24. Staff's witness, Darak Eaddy, testified that Staff supports the Company's request for emergency interim rates of \$30.00 per 1,000 gallons. Under the current circumstances, Staff recommends that the Company discontinue providing water to standpipe customers at any time until the Company is able to satisfy the terms of its Curtailment Tariff. Mr. Eaddy emphasized Staff believes that the Company's limited water should be sold only to its metered customers.

25. Besides recommending approval of an emergency interim gallonage charge of \$30.00 per 1,000 gallons, Staff is also recommending the following:

- that the Company be directed to file, within 30 days of the effective date of this Decision, a revised rate schedule reflecting the emergency rate increase with Docket Control, as a compliance item in this docket;
- that the Company notify its customers, in a form acceptable to Staff, of its emergency interim gallonage charge by means of an insertion in the Company's next regularly scheduled billing;
- that the Company file, within 6 months of the effective date of this Decision, a full rate case;
- that if the Company believes it will need to incur debt in order to solve its water shortage problem, that it file a financing application concurrent with the filing of the rate application; and

¹ According to Attorney General Opinion No. 71-17, interim or emergency rates are proper when either all or any of the following conditions occur: when sudden change brings hardship to a Company; when the Company is insolvent; or when the condition of the Company is such that its ability to maintain service pending a formal rate determination is in serious doubt. Those criteria have been affirmed in *Scates v. Arizona Corporation Comm'n*, 118 Ariz. 531 (Ct. App. 1978) and in *Residential Utility Consumer Office v. Arizona Corporation Comm'n*, 199 Ariz. 588 (2001) ("Rio Verde").

- that the Company not reinstate its standpipe service until further Order from the Commission.

26. Based on our review of the record, we believe that an emergency exists due to a sudden change associated with a lack of well production, which has brought hardship to the Company within the meaning of Attorney General Opinion No. 71-17, and we believe that an interim gallonage charge of \$30.00 per 1,000 gallons should be adopted for all water used by metered customers subject to the Company complying with Staff's additional recommendations described above. Absent emergency relief being granted, the Company's ongoing solvency and its ability to serve customers would be jeopardized.

27. However, the effective date of the \$30.00 emergency interim gallonage charge shall be delayed until the first day of the month following the Company meeting these additional requirements:

- that the Company files with Docket Control, as a compliance item in this docket, documentary evidence that a bond or a sight draft letter of credit of \$10.00 has been posted; and
- that the Company files with Docket Control as a compliance item in this docket, documentary evidence that it is taking steps, to resolve its noncompliance with ADEQ regulations, to Staff's satisfaction.

28. Because an allowance for the property tax expense of the Company is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventive measure the Company annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the

Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

2. The Commission has jurisdiction over the Company and of the subject matter of the Application.

3. Notice of the Application was provided in the manner prescribed by law.

4. Applicant is facing an “emergency” within the definition set forth in Attorney General Opinion No. 71-17, as discussed and affirmed in *Scates* and *Rio Verde* cases cited herein.

5. The standards for approval of a request for interim rate relief require the existence of an emergency; the posting of a bond or a sight draft letter of credit by the utility company; and subsequent filing of a permanent rate application.

6. Approval of the Company's application for interim rate relief, as described herein, is consistent with the Commission's authority under the Arizona Constitution, ratemaking statutes, and applicable case law.

7. The request for interim emergency rate relief is just and reasonable, under the specific facts presented in this case, and should be collected by means of adding a \$30.00 gallonage charge per 1,000 gallons for each metered customer's monthly bill for all water used until further Order, but shall not be effective until the first day of the month following Applicant complying with Findings of Fact Nos. 25 and 27 hereinabove.

8. Applicant should file a permanent rate case with a test year ending September 30, 2007, no later than December 31, 2007.

ORDER

IT IS THEREFORE ORDERED that the application of Bellemont Water Company, Inc. for an emergency interim gallonage charge of \$30.00 per 1,000 gallons for metered customers be, and is hereby, approved to the extent described herein.

IT IS FURTHER ORDERED that the application of Bellemont Water Company, Inc. shall recover its emergency expenses as discussed hereinabove by means of a gallonage charge of \$30.00 per 1,000 gallons for all water used until further Order, but said authorization shall be conditioned upon Bellemont Water Company, Inc. complying with the requirements of Findings of Fact Nos. 25 and 27.

1 IT IS FURTHER ORDERED that Bellemont Water Company, Inc. shall file an application
2 for permanent rate relief with a test year ending September 30, 2007, no later than December 31,
3 2007.

4 IT IS FURTHER ORDERED that the \$30.00 emergency gallonage charge approved herein
5 shall be interim and subject to refund pending the review by Staff of the permanent rate application.

6 IT IS FURTHER ORDERED that Bellemont Water Company, Inc. shall maintain its books
7 and records in accordance with the NARUC Uniform System of Accounts.

8 IT IS FURTHER ORDERED that Bellemont Water Company, Inc. shall file on or before the
9 first day of the month it is enabled to collect the emergency interim \$30.00 per 1,000 gallons, a tariff
10 authorizing it to collect the \$30.00 per 1,000 gallons of water used as authorized herein.

11 IT IS FURTHER ORDERED that the gallonage charge authorized hereinabove shall be
12 effective for all service provided on and after the first day of the month following that in which the
13 requirements of Findings of Fact No. 27 have been met.

14 IT IS FURTHER ORDERED that Bellemont Water Company, Inc. shall, in a form approved
15 by Staff, notify its customers by mail of the emergency interim gallonage charge authorized herein
16 and the prospective effective date of same at least 15 days before the expected date of its imposition.

17 IT IS FURTHER ORDERED that Bellemont Water Company, Inc.'s application for authority
18 to implement emergency interim rates is approved, to the extent and in the manner described herein.

19 IT IS FURTHER ORDERED that Bellemont Water Company, Inc. shall comply with all
20 requirements and recommendations discussed in this Order as a condition of approval of its request
21 for interim rate relief.

22 IT IS FURTHER ORDERED that Bellemont Water Company, Inc. shall post a bond or a
23 sight draft letter of credit in the amount of \$10.00 prior to implementing the emergency interim
24 gallonage charge authorized by this Decision.

25 IT IS FURTHER ORDERED that the emergency water interim gallonage charge shall end
26 when a Commission Decision is issued regarding the Company's permanent rate case application.


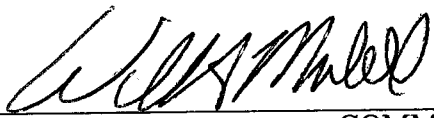



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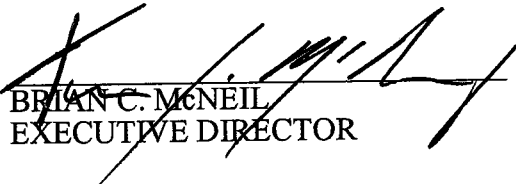
IT IS FURTHER ORDERED that Bellemont Water Company, Inc. shall annually file as part of its annual report an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 CHAIRMAN	 COMMISSIONER
 COMMISSIONER	 COMMISSIONER
	 COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 28th day of June, 2007.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR:

BELLEMONT WATER COMPANY

2 DOCKET NO.

W-02526A-07-0170

3
4 Bradley Ness

5 BELLEMONT WATER COMPANY

6 301 South 9th Street

7 Williams, AZ 86046

8
9 Rodney C. Wilson

10 BELLEMONT WATER COMPANY

11 P. O. Box 31176

12 Flagstaff, AZ 86003

13 Christopher Kempley, Chief Counsel

14 Legal Division

15 ARIZONA CORPORATION COMMISSION

16 1200 West Washington Street

17 Phoenix, AZ 85007

18 Ernest G. Johnson, Director

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